



## **ECRN Joint Position**

**Joint Declaration of the ECRN Presidium**

**“Better regulation for the growing Europe”**

**22 December 2005**

**Limburg/Netherlands**

**[www.ecrn.net](http://www.ecrn.net)**

**At the meeting of the Presidium of the European Chemical Regions Network the following resolution was adopted:**

***Chemical regions call for changes in ETS implementation***

1. The consequences of climate change are not limited to administrative borders and can only be slowed down by adopting global solutions. The EU Commission currently prepares a position on the second round of allocation of allowances for the ETS (emissions trading scheme) that Member States need to implement for the 2<sup>nd</sup> 5-year trading period 2008-2012.
2. The ECRN welcomes the result of the 11<sup>th</sup> Conference of Parties and Meeting of Parties (COP-MOP) in Montreal, in particular to further discuss a global agreement for the combat of climate change after 2012. Global emissions trading is seen by the ECRN as the best instrument for an effective and efficient climate policy enabling financial transfers between states and between companies. From this comes the obligation for the EU to further develop the emissions trading scheme by taking lessons learned into account and to prove to the global community well before 2012 that emissions trading can be a successful instrument indeed.
3. The assessments of the ECRN have shown a number of shortcomings in the way in which the Directive is implemented in the Member States. The ECRN is committed to making these shortcomings clear to avoid ambiguous interpretations:
4. **Leakage of emissions:** Current allocation rules particularly laid down in the National Allocation Plans can force a reduction of production when selling allowances is more profitable than producing and selling products. This may happen for energy intensive industries if the gross margin of production is lower than the “opportunity-cost” of emission allowances.

5. **Electricity “windfall” profits:** A frozen cap for each electricity producer causes an unavoidable significant increase of electricity prices, leading to loss of competitiveness for industrial users and lower consumer welfare. The higher “windfall” profits of electricity producers or “take along” effects are the result of present allocation rules which electricity producers are requested and forced to apply.
6. **Distortions of competition:** Current allocation rules can cause serious competitive distortions within and between sectors. The level playing field is distorted as production plants with similar environmental performance receive different allocations in different Member States.
7. **Historical grandfathering:** To grant allowances based on historical emissions (“historical grandfathering”) and not reward companies for early action compared with an equal standard for all producers can lead to the situation that new investments to reduce emissions are not stimulated. The uncertainty of what the future reference period might be, adds to the hesitations of companies to undertake investments to reduce emissions.
8. **Uncertainty for investment in new economic activities:** New production plants, extensions or capacity creep of existing plants lack security and predictability of the allocation of allowances in the majority of Member States. Reserves for “new entrants” may be depleted when needed. An investment outside the EU does not solve the global climate problem.
9. **Violation of competition rules:** Present allocation rules lead to distortions in a competitive market when companies are seeking to win market share. Market share winners need to buy allowances where losers of market shares can sell. It is mentioned by members of the ECRN that economic growth is important but in practice often inhibited because of the caps of allowances – for example when regaining market share in case of an unlucky historical reference period or when a threshold for a reserve for new entrants is not met and in ad-

dition that the effects of allocation rules make it difficult to become a seller of allowances.

10. **Ambiguity for innovation & efficiency:** Most of the present allocation rules defined in the National Allocation Plans do not stimulate but hinder the introduction and use of eco-efficient and innovative technologies, notably because of shortcomings as elaborated above. For example, Combined Heat & Power (CHP) plants receive in current practices insufficient, or zero or even negative stimulation in the Member States while the Directive stipulates that efficient technologies such as CHP will be encouraged.
11. **Regulatory shortcoming:** The EU Commission has noted that it cannot disapprove ineffective allocation rules other than by the EC Treaty. The judgement of national allocation plans is limited to the criteria of Annex III and article 10 of the Directive.
12. Therefore the ECRN proposes that investment in efficient and innovative technologies such as Combined Heat and Power should be a preferred option and regulation should give credit for and/or encouragement for its introduction.
13. Furthermore the ECRN supports the call from virtually all industry federations to avoid electricity windfall profits but stipulates that the other shortcomings need not to be ignored.
14. The ECRN recognises that auctioning provides a solution to most of the shortcomings but auctioning would be detrimental for the competitive position of EU industry if not applied globally. Therefore the ECRN rejects any auctioning by the Member States.
15. The ECRN strongly believes that the objectives and requirements of the emissions trading Directive are positive and clear but that the criteria for the allocation rules need further reinforcement and clarification.

16. The ECRN suggest that the allocation of the second phase must be simplified taking the following demands into account:

- avoiding of multiple optional allocation methods,
- reducing the exemptions to a minimum necessary for ensuring the market mechanism,
- increasing the legal security for all participants of the scheme and
- lowering of the transaction costs for existing companies and new entries.

17. The ECRN proposes, to avoid the shortcomings of present allocation rules for the 2<sup>nd</sup> trading period until 2012, that the European Commission and the Member States to amend criteria of Annex III of the Directive in a (fast track) comitology procedure:

- To add to criterion 5: *Discrimination between users and producers of electricity is deemed in conflict with the Treaty and allocation rules causing this are prohibited.*
- To add to criterion 6: *Any allocation rule requiring new entrants buy all allowances is prohibited to ensure equal treatment in all circumstances.*
- Criterion 12 (new): *Any allocation rule shall be consistent with the effectiveness of the scheme, to promote reductions*

18. *Furthermore the ECRN favours, that the new guidance note on allocation supports the spirit and content of the amendments above.*

19. The ECRN proposes to investigate – with help of independent experts and institutions – to grant allowances based on output related standards (performance standards) or possibly variants of this method, as an alternative for auctioning.

20. Such a possible alternative approach would mean a conditional allocation of allowances, the condition being that the forecasted production is met.

21. The proposed approach is relevant as the **Lisbon strategy** strives for higher economic growth for social and economic reasons.
22. Priority for an alternative approach could be given to the most energy intensive products e.g. electricity, steel, cement, etc. requiring a limited amount of performance standards (e.g. 20-30 for a start) where a limited number of performance standards are only necessary.
23. The implementation of the Directive must be ensured by effective and predictable allocation rules that unambiguously stimulate eco-efficiency and innovation, avoid distortions of competition and avoid unjustified leakage of emissions outside the EU but truly contribute to the global climate problem.

### ***Better Regulation as a challenge for the future***

24. One key objective of the European Commission is to deliver better regulation over the coming years. It is planned to check the overall *acquis communautaire* whether improvements can be made and unnecessary regulation can be changed.
25. The ECRN strongly supports the European Commission in their attempts to achieve better regulation in the European Union.
26. Particularly with regard to the recently presented initiative to improve the framework conditions for European Industry and the stronger focus on strategic dialogue with the specific industrial sectors, the ECRN offers its participation in a strategic dialogue in the field of chemical industry.
27. Furthermore the ECRN wishes to participate in the Competitiveness and Innovation Programme of the European Union as an important multiplier and cooperation platform for the regional level.

28. Regarding the ambition of the European Commission to carry out an extensive impact assessment for any new regulation the European Chemical Regions Network would like to offer its support to carry out regional impact assessment and trial runs of new regulations prior to the final decision of the European Commission for new legislation. In this context it could be envisaged to use the instrument of tri-partied agreements to clarify the framework conditions for such trial runs in some of the chemical regions.

### ***Stepping up the efforts to adopt the REACH Regulation***

29. After a lengthy debate in the European Parliament and the Council both European Institutions have agreed on their priorities regarding the new chemicals policy in Europe.

30. Key demands of the European Chemical Regions Network expressed in several statements and resolution were met such as:

- a shift from purely volume based requirements for registration towards a registration system based on exposure and substance property,
- the implementation of certain elements of use- and exposure categories to facilitate the registration and the communication along the supply chain,
- tiered information according to the degree of intrinsic properties, level of exposure of substances (substances of high hazard profile and high exposure leading to high risk first and substances of low risk at last),
- the registration according to the principle “One Substance One Registration” (OSOR) shall not be mandatory, but a voluntary consortium shall be facilitated or
- strengthening the role of the European Chemical Agency.

31. The European Chemical Regions Network is welcoming the decision of the European Parliament regarding Registration and particularly the decisions of the Competitiveness Council regarding Authorisation and is asking the Aus-



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trian Presidency to do the utmost to achieve a Common Position in the first half of 2006.

32. The ECRN is also asking the European Commission to step up their efforts to develop easy to handle tools for implementing the REACH regulation once it comes to force.

33. The chemical regions express their support to implement joint strategies and information activities to inform companies, consumers and downstream users on how to use the REACH regulation.